

AMENDED IN ASSEMBLY APRIL 14, 2005
AMENDED IN ASSEMBLY MARCH 31, 2005
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 817

Introduced by Assembly Member Matthews

February 18, 2005

An act to amend ~~Sections 1063.1 and~~ *Section* 1063.3 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 817, as amended, Matthews. Insurance.

Existing law provides for the establishment of the California Insurance Guarantee Association, managed by a board of governors, in which each insurer admitted to transact any specified class of insurance in this state is required to participate. Existing law provides that the purpose of the association is to provide each member insurer insolvency insurance. Existing law ~~defines certain terms with respect to these provisions:~~

~~This bill would expand the definition of “covered claims” to include the obligations of an insolvent insurer to reimburse or indemnify any part of the workers’ compensation liability of an self-insured employer, as specified. This bill would also define a “policy of workers’ compensation insurance” for purposes of these provisions and would limit coverage of claims made by self-insured employers under a specific excess workers’ compensation policy issued after January 1, 2006, based upon the issuing carrier’s credit rating, as specified.~~

~~Existing law provides that in order to detect and prevent member insurer insolvencies, the board may make recommendations to the~~

Insurance Commissioner and prepare and submit a report to the commissioner on the history and causes of any member insurer insolvency in which the association was obligated to pay covered claims, as specified.

This bill would ~~also~~ provide that the board may request the Self-Insurers' Security Fund to prepare, and that the fund may provide, a report identifying the aggregate amount of liability under all specific excess workers' compensation policies as reported by the private self-insured employers, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1063.1 of the Insurance Code is~~
2 ~~amended to read:~~
3 ~~1063.1. As used in this article:~~
4 ~~(a) "Member insurer" means an insurer required to be a~~
5 ~~member of the association in accordance with subdivision (a) of~~
6 ~~Section 1063, except and to the extent that the insurer is~~
7 ~~participating in an insolvency program adopted by the United~~
8 ~~States government.~~
9 ~~(b) "Insolvent insurer" means a member insurer against which~~
10 ~~an order of liquidation or receivership with a finding of~~
11 ~~insolvency has been entered by a court of competent jurisdiction.~~
12 ~~(c) (1) "Covered claims" means the obligations of an~~
13 ~~insolvent insurer, including the obligation for unearned~~
14 ~~premiums, (i) imposed by law and within the coverage of an~~
15 ~~insurance policy of the insolvent insurer; (ii) which were unpaid~~
16 ~~by the insolvent insurer; (iii) which are presented as a claim to~~
17 ~~the liquidator in this state or to the association on or before the~~
18 ~~last date fixed for the filing of claims in the domiciliary~~
19 ~~liquidating proceedings; (iv) which were incurred prior to the~~
20 ~~date coverage under the policy terminated and prior to, on, or~~
21 ~~within 30 days after the date the liquidator was appointed; (v) for~~
22 ~~which the assets of the insolvent insurer are insufficient to~~
23 ~~discharge in full; (vi) in the case of a policy of workers'~~
24 ~~compensation insurance, to provide workers' compensation~~
25 ~~benefits under the workers' compensation law of this state or to~~
26 ~~reimburse or indemnify any part of the workers' compensation~~

liability of an employer that is or was previously issued a certificate of consent to self-insure pursuant to subdivisions (b) or (c) of Section 3700 of the Labor Code; and (vii) in the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

(2) “Covered claims” also include the obligations assumed by an assuming insurer from a ceding insurer where the assuming insurer subsequently becomes an insolvent insurer if, at the time of the insolvency of the assuming insurer, the ceding insurer is no longer admitted to transact business in this state. Both the assuming insurer and the ceding insurer shall have been member insurers at the time the assumption was made. “Covered claims” under this paragraph shall be required to satisfy the requirements of subparagraphs (i) to (vii), inclusive, of paragraph (1), except for the requirement that the claims be against policies of the insolvent insurer. The association shall have a right to recover any deposit, bond, or other assets that may have been required to be posted by the ceding company to the extent of covered claim payments and shall be subrogated to any rights the policyholders may have against the ceding insurer.

(3) “Covered claims” does not include obligations arising from the following:

- (i) Life, annuity, health, or disability insurance.
- (ii) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.
- (iii) Fidelity or surety insurance including fidelity or surety bonds, or any other bonding obligations.
- (iv) Credit insurance.
- (v) Title insurance.
- (vi) Ocean marine insurance or ocean marine coverage under any insurance policy including claims arising from the following: the Jones Act (46 U.S.C.A. Sec. 688), the Longshore and Harbor Workers’ Compensation Act (33 U.S.C.A. Sec. 901 et seq.), or any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.
- (vii) Any claims servicing agreement or insurance policy providing retroactive insurance of a known loss or losses, except a special excess workers’ compensation policy issued pursuant to subdivision (c) of Section 3702.8 of the Labor Code that covers

~~1 all or any part of workers' compensation liabilities of an
2 employer that is issued, or was previously issued, a certificate of
3 consent to self-insure pursuant to subdivision (b) of Section 3700
4 of the Labor Code.~~

~~5 (4) "Covered claims" does not include any obligations of the
6 insolvent insurer arising out of any reinsurance contracts, nor any
7 obligations incurred after the expiration date of the insurance
8 policy or after the insurance policy has been replaced by the
9 insured or canceled at the insured's request, or after the insurance
10 policy has been canceled by the association as provided in this
11 chapter, or after the insurance policy has been canceled by the
12 liquidator, nor any obligations to any state or to the federal
13 government.~~

~~14 (5) "Covered claims" does not include any obligations to
15 insurers, insurance pools, or underwriting associations, nor their
16 claims for contribution, indemnity, or subrogation, equitable or
17 otherwise, except as otherwise provided in this chapter.~~

~~18 An insurer, insurance pool, or underwriting association may
19 not maintain, in its own name or in the name of its insured, any
20 claim or legal action against the insured of the insolvent insurer
21 for contribution, indemnity or by way of subrogation, except
22 insofar as, and to the extent only, that the claim exceeds the
23 policy limits of the insolvent insurer's policy. In those claims or
24 legal actions, the insured of the insolvent insurer is entitled to a
25 credit or setoff in the amount of the policy limits of the insolvent
26 insurer's policy, or in the amount of the limits remaining, where
27 those limits have been diminished by the payment of other
28 claims.~~

~~29 (6) "Covered claims," except in cases involving a claim for
30 workers' compensation benefits or for unearned premiums, does
31 not include any claim in an amount of one hundred dollars (\$100)
32 or less, nor that portion of any claim that is in excess of any
33 applicable limits provided in the insurance policy issued by the
34 insolvent insurer.~~

~~35 (7) "Covered claims" does not include that portion of any
36 claim, other than a claim under a policy of workers'
37 compensation insurance, that is in excess of five hundred
38 thousand dollars (\$500,000).~~

~~39 (8) "Covered claims" does not include any amount awarded as
40 punitive or exemplary damages, nor any amount awarded by the~~

1 Workers' Compensation Appeals Board pursuant to Section 5814
2 or 5814.5 because payment of compensation was unreasonably
3 delayed or refused by the insolvent insurer.

4 (9) "Covered claims" does not include (i) any claim to the
5 extent it is covered by any other insurance of a class covered by
6 this article available to the claimant or insured nor (ii) any claim
7 by any person other than the original claimant under the
8 insurance policy in his or her own name, his or her assignee as
9 the person entitled thereto under a premium finance agreement as
10 defined in Section 673 and entered into prior to insolvency, his or
11 her executor, administrator, guardian or other personal
12 representative or trustee in bankruptcy and does not include any
13 claim asserted by an assignee or one claiming by right of
14 subrogation, except as otherwise provided in this chapter.

15 (10) "Covered claims" does not include any obligations arising
16 out of the issuance of an insurance policy written by the separate
17 division of the State Compensation Insurance Fund pursuant to
18 Sections 11802 and 11803.

19 (11) "Covered claims" does not include any obligations of the
20 insolvent insurer arising from any policy or contract of insurance
21 issued or renewed prior to the insolvent insurer's admission to
22 transact insurance in the State of California.

23 (12) "Covered claims" does not include surplus deposits of
24 subscribers as defined in Section 1374.1.

25 (d) "Admitted to transact insurance in this state" means an
26 insurer possessing a valid certificate of authority issued by the
27 department.

28 (e) "Affiliate" means a person who directly or indirectly,
29 through one or more intermediaries, controls, is controlled by, or
30 is under common control with an insolvent insurer on December
31 31 of the year next preceeding the date the insurer becomes an
32 insolvent insurer.

33 (f) "Control" means the possession, direct or indirect, of the
34 power to direct or cause the direction of the management and
35 policies of a person, whether through the ownership of voting
36 securities, by contract other than a commercial contract for goods
37 or nonmanagement services, or otherwise, unless the power is the
38 result of an official position with or corporate office held by the
39 person. Control is presumed to exist if any person, directly or
40 indirectly, owns, controls, holds with the power to vote, or holds

1 proxies representing 10 percent or more of the voting securities
2 of any other person. This presumption may be rebutted by
3 showing that control does not in fact exist.

4 (g) “Claimant” means any insured making a first-party claim
5 or any person instituting a liability claim; provided that no person
6 who is an affiliate of the insolvent insurer may be a claimant.

7 (h) “Ocean marine insurance” includes marine insurance as
8 defined in Section 103, except for inland marine insurance, as
9 well as any other form of insurance, regardless of the name,
10 label, or marketing designation of the insurance policy, that
11 insures against maritime perils or risks and other related perils or
12 risks, which are usually insured against by traditional marine
13 insurance such as hull and machinery, marine builders’ risks, and
14 marine protection and indemnity. Those perils and risks insured
15 against include, without limitation, loss, damage, or expense or
16 legal liability of the insured arising out of or incident to
17 ownership, operation, chartering, maintenance, use, repair, or
18 construction of any vessel, craft or instrumentality in use in
19 ocean or inland waterways, including liability of the insured for
20 personal injury, illness, or death for loss or damage to the
21 property of the insured or another person.

22 (i) “Unearned premium” means that portion of a premium that
23 had not been earned because of the cancellation of the insolvent
24 insurer’s policy and is that premium remaining for the unexpired
25 term of the insolvent insurer’s policy. “Unearned premium” does
26 not include any amount sought as return of a premium under any
27 policy providing retroactive insurance of a known loss or return
28 of a premium under any retrospectively rated policy or a policy
29 subject to a contingent surcharge or any policy in which the final
30 determination of the premium cost is computed after expiration
31 of the policy and is calculated on the basis of actual loss
32 experience during the policy period.

33 (j) A “policy of workers’ compensation insurance” shall
34 include any insurance policy that obligates the issuing carrier to
35 either provide workers’ compensation benefits under the
36 workers’ compensation laws of this state or any specific excess
37 workers’ compensation policy issued at any time that obligates
38 the issuing carrier to reimburse or indemnify any part of the
39 workers’ compensation liability of an employer that is or was
40 previously issued a certificate of consent to self-insure pursuant

1 ~~to subdivision (b) or (c) of Section 3700 of the Labor Code. Any~~
2 ~~claim made by a self-insured employer under a specific excess~~
3 ~~workers' compensation policy issued after January 1, 2006, shall~~
4 ~~only be considered a covered claim under this section if the~~
5 ~~issuing carrier had on the date of policy issuance or policy~~
6 ~~renewal an acceptable credit rating as set forth in a regulation to~~
7 ~~be adopted by the Director of Industrial Relations pursuant to this~~
8 ~~section and Article 1 (commencing with Section 3700) of~~
9 ~~Chapter 4 of Part 1 of Division 4 of the Labor Code.~~

10 SEC. 2.

11 *SECTION 1.* Section 1063.3 of the Insurance Code is
12 amended to read:

13 1063.3. To aid in the detection and prevention of member
14 insurer insolvencies:

15 (a) The board may, upon majority vote, make
16 recommendations to the commissioner on matters pertaining to
17 regulation for solvency.

18 (b) The board may prepare a report on the history and causes
19 of any member insurer insolvency in which the association was
20 obligated to pay covered claims, based on the information
21 available to the association, and submit that report along with any
22 recommendations resulting therefrom to the commissioner.

23 (c) The board may request the Self-Insurers' Security Fund to
24 prepare, and the Self-Insurers' Security Fund may provide to the
25 board, a report identifying the aggregate amount of liability,
26 including the estimated exposure for every insurance carrier
27 admitted to transact workers' compensation insurance in this
28 state, under all specific excess workers' compensation policies in
29 existence for a given period in this state as reported by the
30 private self-insured employers to the Director of Industrial
31 Relations in the annual reports submitted pursuant to Section
32 3702.2 of the Labor Code.